

MT LEGISLATIVE HISTORY

Chapter 522 1981

Bill H _____ (S) 161

Original bill & hist. ____C

H. Committee on Judiciary

S. Committee on Judiciary

Hearing Date(s) Mar 11 ✓C

Hearing Date(s) Jan 26 ✓C

Mar 12 ✓C

_____C

_____C

_____C

_____C

_____C

Date Out _____C

Feb 04 ✓C

Did this bill originate in an interim committee? ____Yes ____No

Committee _____

Report _____

MIKE YOUNG, Department of Administration, was opposed to the bill. Those that defend the state do not get the benefit of the doubt. This law has only been on the books for two years. It has not been given a chance. A petition could be made. Commission law requires that a writ of mandamus be filed if a complaint occurs. Attorneys fees and costs are available under those provisions.

There were no further opponents.

In closing, SENATOR KOLSTAD felt this was a good bill. He felt the state benefits most of the time in these cases and the individual should receive the benefit of the doubt.

REP. TEAGUE asked if this bill were passed would it apply to the IRS. HUSS replied no.

REP. HANNAH asked how many cases were filed by the state last year. YOUNG replied there are approximately 60 in his office presently.

REP. HANNAH asked how much is paid out for each case. YOUNG replied approximately \$8-9,000 in writs in the last five years.

REP. YARDLEY asked about subsection 1 and 2. HUSS stated the bill does not involve torts.

HUSS recommended to strike "costs" and insert "attorneys fees". After some discussion it was suggested to insert "and attorneys fees" after "costs".

REP. KEYSER asked about the fiscal note. The Senator stated when it was first drawn up it included torts; as it is amended, however, it does not. Therefore, the fiscal note is not correct. YOUNG felt without torts in the fiscal note it would be reduced 5-10%. The 19 departments could lose up to five different cases a year. You never know how many will try to bring a writ case.

REP. YARDLEY asked if this would include school boards and counties. YOUNG replied it would include all governmental entities.

SENATE BILL 161 SENATOR MAZUREK, sponsor, stated this bill is to adopt revisions to the uniform limited partnership act. This was adopted in 1947 in Montana. On a national scale changes are needed. This bill represented those revisions that were made on the national scale. With the economy and the increased moving among states it a good idea to have this law. EXHIBIT 2. EXHIBIT 3, a letter from JAMES M. HAUGHEY, was also handed out.

WARD SHANNAHAN, Chairman of the State Bar Business Section, stated

the section supports the bill. It is an investment tool. The bill as introduced in 1979 had problems with the IRS. That problem is cleared up now.

BOB MURDO, Business Law Section of the State Bar, supports the bill. EXHIBIT 4. MURDO stated since 1916 when the law was adopted, only two changes have occurred since that time. One was to change serious mental illness to insanity. It has been adopted in all fifty states except Louisiana.

RICK TUCKER, State Auditor, supports the bill.

TED DONEY, Petro-Lewis Corp., stated oil and gas utilities support the bill. Presently there is much paperwork involved if a company does business in several counties. Documents must be filed in each of the counties.

DON ALLEN, Montana Petroleum Association, supports the bill.

There were no further proponents.

There were no opponents.

SENATOR MAZUREK closed the bill.

REP. BENNETT asked about the controlling documents. SENATOR MAZUREK replied the controlling document will become the agreement.

REP. TEAGUE asked if a person owned 10% of the company would he receive 10% of the votes. SENATOR MAZUREK replied he would get an increased voice in the partnership. Yet in order to receive voting privileges he would have to be a general partner. SHANAHAN stated it would have to be spelled out in the agreement. The managing partner is the partner who is liable.

REP. EUDAILY asked about section 6 of the bill. The Senator responded that was added at the request of the Secretary of State. It is not necessary to have that in the title.

REP. KEEDY asked if limited partners could also be general partners. SHANAHAN replied many people hesitate to invest money where the managing partner does not have any money in it himself.

SENATE BILL 164 SENATOR S. BROWN, chief sponsor, stated this bill is to provide for the payment of delinquent child support by deduction from the obligor's income. EXHIBIT 5.

Out of 4877 divorces last year 2780 (57%) involved children. The average divorced family involved two children. In the Department of Revenue 4633 delinquent payments of cases have been filed.

REVISED UNIFORM LIMITED PARTNERSHIP ACT

The Uniform Limited Partnership Act was promulgated originally in 1916. It has been adopted in 45 jurisdictions and, with the Uniform Partnership Act, is the basis for law regulating partnerships in the United States. The limited partnership is distinguished from a general partnership by the existence of limited partners who invest in the partnership with liability limited to the amount invested. A general partner is liable individually for all the obligations of the partnership. In return for limited liability, the limited partner relinquishes any right of control or management of partnership affairs.

Limited partnerships have become, in 60 years, an important means of business organization and are used extensively. Over the 60 years of generally salubrious usage, this form of organization has encountered some problems. In 1976, a revision has been drafted, based on 60 years of extensive experience, to improve this method of organization even more.

The most important changes have been made in the scope of the limited partner's activities vis-a-vis the partnership. Under the original Uniform Limited Partnership Act, a limited partner could not contribute services to the partnership. He had to contribute property or other valuable obligations to obtain his status. Under the revision, services may now be contributed, as well as property or valuable obligations. The second change regards voting rights. The original Uniform Limited Partnership Act did not deny voting rights to limited partners, but neither did it permit them. The revision allows limited partners to be granted voting rights in the partnership agreement. These two provisions both change and enhance a limited partner's status.

When a limited partner can vote and contribute services, the question of control or participation in management becomes more critical. The Revised Act, therefore, takes special care in distinguishing those acts which do not alone determine control. The question of control is to be answered in the light of all facts and circumstances, but, if the limited partner does singly any of certain things, he or she is not by that fact liable as a general partner. These things include being a contractor for or agent of a general partner, consulting or advising a general partner with respect to partnership business, acting as a surety for the limited partnership, approving or disapproving an amendment to the partnership agreement, or voting on certain specific matters.

onable determinations that a limited partner takes part in the control of the business.

The original Uniform Limited Partnership Act provided only for a certificate of partnership. It made no mention of partnership agreements. The Revised Act changes the face of the partnership by changing the emphasis from the certificate to the agreement. Under the Revised Act, the certificate of limited partnership is confined principally to matters respecting the addition and withdrawal of partners and of capital. Other issues that are important are left to the agreement.

For example, a partner may lend money to and transact other business with a limited partnership as if the partner were a total outsider, except as otherwise provided in the partnership agreement. The partnership agreement determines the distribution of voting rights. The shares in profits and losses are decided in the partnership agreement. The partnership agreement becomes the important working document in the operation of the partnership.

There are other important changes, also, in the Revised Act. For example, a central registry is provided for limited partnerships. It is anticipated that the registrar for corporations and other business organizations, usually the Secretary of State, will also perform the function for limited partnerships. There is provision, also new, for registration of a name during the period of formation for a limited partnership. Another important addition guarantees limited partners the right to partnership records, a right not before accorded. This permits a limited partner to protect his or her investment in the partnership by keeping better track of the business itself. Also provided is a derivative action by limited partners against the partnership to redress mismanagement affecting a limited partner's interests. This would be very like a stockholder's derivative suit against a corporation. One of the historically apparent difficulties of limited partnerships has been protection of limited partner's rights. People have been induced to invest only to find that the investment has been squandered, and nothing could be done until general insolvency. These changes would curtail this problem.

Another significant, new contribution of the Revised Act is registration of foreign limited partnerships. Doing business interstate is a commonality for all business organizations, including limited partnerships. Therefore, the problems of jurisdiction and notice parallel those of corporations. Accordingly, a registration requirement for limited partnerships from other states doing business in an enacting state is established. This is required now in almost all jurisdictions for a foreign business

corporation. The requirement recognizes the partnership as utilized in the United States today.

The Uniform Limited Partnership Act, the 1916 version, has served well as the backbone of the law on limited partnerships. However, usages change, and new problems arise. The old Act is remarkably resilient, considering the historical record. Its revision now comes forward as a response to the changes that have occurred. It is the same business organization, but with characteristics for today's business. It should be good, at least, for another 60 years.

500 ELECTRIC BUILDING
BILLINGS, MONTANA 59101

P. O. BOX 2529
TELEPHONE 252-3441
AREA CODE 406

CALE CROWLEY
JAMES H. HAUGHNEY
NORMAN HANSON
BRUCE R. TOOLE
JOHN M. DIETRICH
THOMAS H. KELLEY
LOUIS R. MOORE
GARELD F. KRIEG
ARTHUR F. LANEY, JR.
MYLES J. THOMAS
GEORGE C. GALTHORP
DAVID L. JOHNSON

KEMP WILSON
ROBERT EDD LEE
STUART W. CONNER
THOMAS F. TOPEL
RONALD R. LODGE
JOHN L. GALLINGER
STEVEN P. RUFFATTO
ALLAN L. KARELL
L. RANDALL BISHOP
STEVEN J. LEHMAN
RONALD L. FRAZEE
MARK D. SATTY
TERRY G. SPEAR
LYNTHIA FORD
LAURA A. MITCHELL
SHERRY J. MATTEUCCI

January 22, 1981

Senator Joe Mazurek
Senate Judiciary Committee
Capitol Station
Helena, Montana 59601

Dear Joe:

I understand that LC 1119, introduced by Senators Mazurek and Turnage, which would adopt the Revised Uniform Limited Partnership Act (1976), is set for hearing at 8:00 A.M. on January 26, before the Senate Judiciary Committee. If it were possible, I should attend the hearing to urge passage of the bill, as I am convinced that enactment of the Revised Act is of real importance to the growth and development of business and industry in Montana.

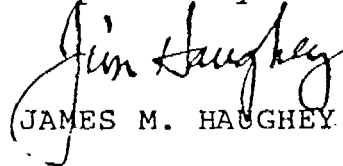
Since about 1970, and particularly during the last two or three years, I have handled the formation of many limited partnerships in Montana and have been called upon for opinions as to the limited liability of limited partners in partnerships formed in other states, which desire to do business in Montana. The use of limited partnerships in business transactions has grown rapidly in recent years, and the limited partnership form is very commonly employed by land developers and developers of oil and gas and other minerals. Many limited partnerships desire to operate in several or many states, but Montana's present Uniform Limited Partnership Act (which was originally written in 1916) is wholly inadequate to provide for multi-state operations.

Unlike LC 1119, our present Act does not provide for the registration or qualification in Montana of a limited partnership formed in another state. Consequently, the limited partners of such a foreign limited partnership cannot be certain that they will have limited liability while doing business in Montana. The effect of this uncertainty is to discourage foreign limited partnerships to do business in Montana. To cite an example, I represent one major limited partnership which plans to invest \$100,000,000.00 per year for the next six years in oil and gas exploration and development. The limited partnership will qualify to do business in Montana if the Revised Uniform Limited Partnership Act is enacted, but it presently is unwilling to invest funds in Montana under the existing Act.

In addition to the provision for qualification of foreign limited partnerships, the Revised Uniform Limited Partnership Act makes a number of changes in the law which are highly beneficial and are consistent with modern business practices.

I hope the Senate Judiciary Committee will recommend passage of LC 1119, because its enactment will encourage the investment of capital in Montana. In my opinion, the adoption of the Revised Act will also result in the expansion of employment opportunities in the state and in the increase in local and state tax revenues.

Respectfully submitted,


(JAMES M. HAUGHEY

JMH/cas

this field. ZION stated that many people would be willing to become a limited guardian. An agency might be able to recruit service organizations for this; it would be like a Big Brother Big Sister Program.

SENATE BILL 403 SENATOR MAZUREK, sponsor, stated this bill is to conform provisions applicable to protective services to Montana's Guardianship and Conservator law. This would ensure that if the SRS became a guardian they follow the procedures in the guardianship act. It would require the compiling of a list of qualifying factors. That information would be available to the courts. This bill fits with Senate Bill 404.

ROSEMARY ZION was in support of the bill. This would require the SRS to make information available to the judges. The judges do not have the time to look thoroughly into this matter. It makes sense to have the information at the judges disposal.

CARY LUND, SRS, was in support of the bill.

There were no further proponents.

There were no opponents.

SENATOR MAZUREK closed the bill.

EXECUTIVE SESSION

The House Judiciary Committee went into Executive Session at 9:50 a.m.

SENATE BILL 161 REP. HANNAH moved do pass.

The motion carried unanimously. The statement of intent was also concurred in.

SENATE BILL 164 REP. BROWN moved do pass.

REP. BROWN felt the pressures placed on the child are severe.

REP. HANNAH did not like section 10 of the bill. REP. EUDAILY agreed.

REP. MCLANE asked what the present law is concerning the withholding of wages. REP. YARDLEY stated minimum wage is exempt. It is a formula the federal government uses.

J.C. WEINICHARTEN

DATE:

ADDRESS:

$\Delta \varepsilon / \varepsilon_{n.4}$

PHONE:

27700

REPRESENTING WHOM?

State Bar of Montana

APPEARING ON WHICH PROPOSAL:

S. B.

16/

DO YOU:

SUPPORT?

AMEND?

OPPOSE?

COMMENTS:

CALE CROWLEY
JAMES M. HAUGHNEY
NORMAN HANSON
BRUCE R. TOOLE
JOHN M. DIETRICH
THOMAS H. KELLEY
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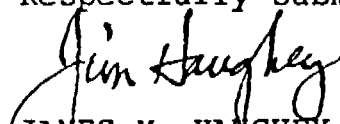
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corporation. The requirement recognizes the scope of the limited partnership as utilized in the United States today.

The Uniform Limited Partnership Act, the 1916 version, has served well as the backbone of the law on limited partnerships. However, usages change, and new problems arise. The old Act is remarkably resilient, considering the historical record. Its revision now comes forward as a response to the changes that have occurred. It is the same business organization, but with characteristics for today's business. It should be good, at least, for another 60 years.

UNIFORM LIMITED PARTNERSHIP ACT (1976)

Drafted by the
NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

and by it
APPROVED AND RECOMMENDED FOR ENACTMENT
IN ALL THE STATES

at its
ANNUAL CONFERENCE
MEETING IN ITS EIGHTY-FIFTH YEAR
AT ATLANTA, GEORGIA
JULY 31 - AUGUST 6, 1976

WITH PREFATORY NOTE AND COMMENTS

APPROVED BY THE AMERICAN BAR ASSOCIATION AT ITS MEETING IN
ATLANTA, GEORGIA, FEBRUARY 13, 1979

an association must be determined by taking into account the presence or absence of each of these corporate characteristics.

In addition to the major characteristics, section 301.7701-2(a)(1) of the regulations provides, in part, that "other factors" may be found in some cases which may be significant in classifying an organization as an association, a partnership or a trust.

The Internal Revenue Service will follow, in classifying organizations under section 7701 of the Code, the decision of the United States Tax Court in *Larson v. Commissioner* [CCH Dec. 33,793], 66 T. C. 159 (1976), acq., I. R. B. 1979-12, 6, in which the court held that two real estate syndicates organized under the California Uniform Limited Partnership Act were partnerships for federal income tax purposes. In *Larson*, the court, while not concluding that additional "factors" are never relevant, found that some of the following "factors" were elements of the major characteristics and that the other "factors" were not of critical importance for purposes of classifying the partnerships.

(1) The division of limited partnership interests into units or shares and the promotion and marketing of such interests in a manner similar to corporate securities,

(2) the managing partner's right or lack of the discretionary right to retain or dis-

tribute profits according to the needs of the business,

(3) the limited partner's right or lack of the right to vote on the removal and election of general partners and the right or lack of the right to vote on the sale of all, or substantially all, of the assets of the partnership,

(4) the limited partnership interests being represented or not being represented by certificates,

(5) the limited partnership's observance or lack of observance of corporate formalities and procedures,

(6) the limited partners being required or not being required to sign the partnership agreement, and

(7) the limited partnership providing a means of pooling investments while limiting the liability of some of the participants.

Accordingly, as a result of the *Larson* case, the Service will not consider the factors enumerated above as "other factors" that have significance (independent of their bearing on the six major corporate characteristics) in determining the classification of arrangements formed as limited partnerships.

[¶ 6496] Rev. Proc. 79-16, I. R. B. 1979-12, 23.

[Code Secs. 61, 446 and 471]

Inventories; Change in accounting method: Accrual basis farmers: Preproduction period expenses: Revenue Act of 1978.—Section 352 of the Revenue Act of 1978 exempts accrual method farmers, nurserymen, and florists, not required to capitalize preproduction period expenses, from the requirement that they inventory the value of growing crops, trees, and plants and from the requirement that they obtain the Commissioner's approval prior to switching to the cash method of accounting. Rev. Ruls. 76-242 and 77-64 revoked. Rev. Proc. 78-22 revoked. Back references: ¶ 651.01, 655.025, 2771.376 and 2946.12.

Rev. Proc. 78-22, 1978-34 I. R. B. 26, provides a procedure whereby certain farmers, nurserymen, and florists may change their method of accounting to the cash receipts and disbursements method of accounting (cash method). Rev. Proc. 78-22 applies to such taxpayers that elected (or changed to) and employed the accrual method of accounting in reliance on the position described in I. T. 1368, I-1 C. B. 72 (1922) or O. D. 995, 5 C. B. 63 (1921). I. T. 1368 and O. D. 995 were revoked by Rev. Rul. 76-242, 1976-1 C. B. 132, as modified by Rev. Rul. 77-64, 1977-1 C. B. 136, for taxable years beginning on or after January 1, 1978.

Rev. Rul. 76-242 revoked the positions of the Internal Revenue Service set forth in I. T. 1368 and O. D. 995 by requiring farmers, nurserymen, and florists using an accrual method of accounting to inventory growing

crops, growing trees, or growing plants unless such taxpayers use the crop method because the Service determined that growing crops, trees, or plants are now capable of being inventoried.

Section 3.01 of Rev. Proc. 78-22 provides that farmers, nurserymen, and florists that elected (or changed to) and employed the accrual method of accounting in reliance on the position described in I. T. 1368 or O. D. 995 but do not desire to inventory growing crops, trees, or plants, as required of an accrual basis taxpayer by Rev. Rul. 76-242, will be permitted to change their method of accounting to the cash method by filing an application on a current Form 3115 (Application for Change in Accounting Method). The taxpayer must provide all the information required on the Form 3115 and the ad-

79(10) CCH—Standard Federal Tax Reports

¶ 6496

NAME: BOB MURDO DATE: 1/26/81

ADDRESS: 203 No. EWING - HELENA

PHONE: 442-1300

REPRESENTING WHOM? BUSINESS SECTION, STATE BAR OF MONTANA

APPEARING ON WHICH PROPOSAL: SB 161

DO YOU: SUPPORT? ☒ AMEND? ☐ OPPOSE? ☐

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY

61

NAME: Ho 902 | 4/1/04 DATE: _____

ADDRESS: 36 S. East Chance Mall

PHONE: 712-7951

REPRESENTING WHOM? Business Law Section, State Bar of Mont

APPEARING ON WHICH PROPOSAL: 58161

DO YOU: SUPPORT? ☒ AMEND? OPPOSE?

COMMENTS:

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY

NAME: Ted J. Doney DATE: 1/26/81

ADDRESS: 36 S. Last Chance Mall

PHONE: 442-4451

REPRESENTING WHOM? Petro-Lewis Corp.

APPEARING ON WHICH PROPOSAL: S. B. 161

DO YOU: SUPPORT? X AMEND? _____ OPPOSE? _____

COMMENTS: _____

NAME: Don J. Allen DATE: 1/26/81

ADDRESS: Helena, mt. 59601

PHONE: 402-7582

REPRESENTING WHOM? Mr. Peterson Assoc.

APPEARING ON WHICH PROPOSAL: SB 161

DO YOU: SUPPORT? ☒ AMEND? ☐ OPPOSE? ☐

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY

FORTY-SEVENTH LEGISLATIVE SESSION

COMMITTEE ON JUDICIARY

<u>SENATE</u> <u>BILL NO.</u>	<u>ENTERED</u> <u>COMM.</u>	<u>DATE</u> <u>CONSIDERED</u>	<u>OUT OF</u> <u>COMM.</u>	<u>DO PASS</u> <u>DATE</u>	<u>DO NOT</u> <u>PASS</u> <u>DATE</u>	<u>DO PASS</u> <u>AS AMEND.</u> <u>DATE</u>	<u>BE CON-</u> <u>CURRED IN</u> <u>DATE</u>	<u>BE CONC. IN</u> <u>AS AMENDED</u> <u>DATE</u>	<u>BE NOT CON-</u> <u>CURRED IN</u> <u>DATE</u>
SB 83	1/08/81	1/14/81	1/19/81			1/19/81			
SB 89	1/09/81	1/14/81	1/20/81	1/20/81					
SB 94	1/10/81	1/15/81	1/15/81	1/15/81					
SB 111	1/13/81	1/19/81	1/20/81			1/20/81			
SB 112	1/13/81	1/19/81	2/14/81			2/14/81			
SB 117	1/14/81	1/20/81	1/23/81			1/23/81			
SB 119	1/14/81	1/22/81	1/23/81	1/23/81					
SB 120	1/14/81	1/22/81	2/07/81			2/07/81			
SB 144	1/15/81	1/29/81	1/30/81			1/30/81			
SB 145	1/15/81	1/23/81	1/23/81	1/23/81					
SB 149	1/16/81	1/23/81	1/30/81			1/30/81			
SB 159	1/16/81	transferred to Fish & Game							
SB 161	1/16/81	1/26/81	2/04/81			2/04/81			
SB 162	1/16/81	1/26/81	1/30/81			1/30/81			
SB 164	1/17/81	2/02/81	2/07/81			2/07/81			
SB 174	1/17/81	2/02/81	2/04/81	2/04/81					

MINUTES OF MEETING
SENATE JUDICIARY COMMITTEE
January 26, 1981

Page 1.

The thirteenth meeting of the Senate Judiciary Committee was called to order by Mike Anderson, Chairman, on the above date in Room 331, at 10:00 a.m.

ROLL CALL:

All members were present.

CONSIDERATION OF SENATE BILL 161:

AN ACT TO ADOPT THE REVISED UNIFORM LIMITED
PARTNERSHIP ACT; REPEALING SECTIONS
35-12-101 THROUGH 35-12-403, MCA.

Senator Mazurek, District 16, Helena, presented the bill as its sponsor, on behalf of the Business Section of the State Bar of Montana. He pointed out that a similar bill was introduced during the 1979 session, and was defeated. This present bill is intended to revise and bring up to date the existing limited partnership laws. Senator Mazurek then made reference to a letter from James M. Haughey, Billings attorney (marked Exhibit A and attached to these minutes). He also explained limited partnership corporations according to Exhibit B, attached to these minutes.

Ward Shanahan, Chairman of the Bar Association's Business Section, then testified on behalf of this bill. He pointed out that one of the main reasons for amending the present law is the ponderous filing procedure that now is required.

Bob Murdo, Secretary of the Business Section of the State Bar Association, in testifying for this bill, referred the committee to a copy of the law (marked Exhibit C and attached to these minutes) and a copy of an article taken from "The Business Lawyer", November, 1978 (marked Exhibit D and attached to these minutes).

Roger Tippy, of the Business Law Section of the State Bar Association, described his efforts in composing this bill and assessing its effectiveness. He stated that the State Auditor's Office supports the bill as written.

Ted Doney, attorney from Helena, representing Petro-Lewis Corp., stated that his client feels that this updating of the existing law is very necessary because of the current

law is unclear on the procedure to be used in registering foreign limited partnerships.

Don Allen, Executive Director of the Montana Petroleum Association, also spoke in favor of the bill, as did J. C. Weingartner, representing the State Bar Association of Montana.

Senator Crippen then cautioned that the repealer clauses and the effective date clauses would have to be handled very carefully; and pointed out that there might be some potential tax benefits to the state from income derived from the partnership.

CONSIDERATION OF SENATE BILL 162:

AN ACT TO PROVIDE FOR CONTRIBUTION
FROM JOINT TORTFEASORS; AMENDING
SECTION 27-1-703, MCA.

Senator Mazurek presented the bill, stating that the present statute is unfair because it tends to single out a defendant who is most apt to be able to pay damages, rather than distributing blame among all parties who might be responsible. At the end of his presentation he submitted proposed amendments (marked Exhibit E and attached to these minutes).

Glen Drake, attorney from Helena, representing the American Insurance Association, spoke in support of the bill, describing it as a necessary aid to justice in negligence actions.

Mike Meloy, representing the Montana Trial Lawyers Association, then spoke in opposition to the bill. He felt that the amendment submitted by Senator Mazurek does all the correcting of present law that is required; and that the bill itself permits the defendant to join anyone else as a party who the defendant feels is a contributor to the damage. He said that the present law puts more pressure on the plaintiff to pick the correct defendant -- that is, the one who has actually caused the damage.

In closing, Senator Mazurek stated that the plaintiff should not be placed in the position of picking the defendants -- it should be the responsibility of the court.

FURTHER CONSIDERATION OF SENATE BILL 112:

Senator O'Hara moved that the bill pass.

Senator Crippen felt that in line 17 of the bill the term "administrative remedies" is confusing. The feeling of Senators Mazurek, S. Brown, and Crippen was that the bill

JUDICIARY COMMITTEE

47th LEGISLATIVE SESSION - - 1981

Date 1/26/81

NAME	PRESENT	ABSENT	EXCUSED
Anderson, Mike, Chr (R)	✓		
O'Hara, Jesse A. (R)	✓		
Olson, S. A. (R)	✓		
Brown, Bob (R)	✓		
Crippen, Bruce D. (R)	✓		
Tveit, Larry J. (R)	✓		
Brown, Steve (D)	✓		
Berg, Harry K. (D)	✓		
Mazurek, Joseph P. (D)	✓		
Halligan, Michael (D)	✓		

Each day attach to minutes.

NAME: WARD SHANAHAN DATE: 1-26-81

301
ADDRESS: FIRST NAVE BANK BLDG P.O. Box 1686 HELENA MT

PHONE: 442-8560

REPRESENTING WHOM? BUSINESS SECTION, STATE BAR of MONT.

APPEARING ON WHICH PROPOSAL: SB 161 LTD P'sHIP Act

DO YOU: SUPPORT? X AMEND? _____ OPPOSE? _____

COMMENTS: Will make oral statement

LAW AND ANALYSIS

Section 995(c) of the Code, as originally enacted, provided that if a shareholder disposed of stock in a DISC, any gain recognized on such disposition would be included in gross income as a dividend to the extent of accumulated DISC income of such DISC attributable to the shareholder's stock interest. The section also provided that if the disposition transaction terminated the separate corporate existence of the DISC, any gain realized on the disposition of such stock will be recognized to the extent of accumulated DISC income attributable to the disposing shareholder's stock interest.

Section 995(c)(1)(C) of the Code, which was added by the Tax Reform Act of 1976 [Pub. L. 94-455], section 1101(d)(1), 1976-3 (Vol. 1) C. B. 1, 134, provides additionally that if a shareholder sells stock in a DISC in a liquidation qualifying for nonrecognition of gain under section 337, then the excess of fair market value over adjusted basis of such stock will be included in gross income of the shareholder as a dividend to the extent provided in section 995(c)(2). Section 995(c)(2) provides that the amount described in section 995(c)(1) shall be included in gross income as a dividend to the extent of the accumulated DISC income of the DISC which is attributable to the stock disposed of and which was accumulated in taxable years in which the corporation during the period in which the stock disposed of was held by the shareholder which disposed of such stock.

The Senate Finance Committee (S. Rep. 94-938, 94th Cong., 2d Sess. 299 (1976), 1976-3 (Vol. 3) C. B. 57, 337) in explaining the law change stated:

[§6495]. Rev. Rul. 79-106, I. R. B. 1979-12, 21.

[Code Sec. 7701]

Association v. partnership: Limited partnership arrangements: Tax classification: Significant factors.—Factors are listed that will not be considered (independent of their bearing on the six major corporate characteristics listed in section 301.7701-2(a)(1) of the regulations) "other factors" that are significant in determining the classification under section 7701 of the Code of arrangements formed as limited partnerships. Back reference: 43.01.

Advice has been requested whether the factors described below will be considered "other factors" that are significant in determining the classification of arrangements formed as limited partnerships for purposes of the regulations under section 7701 of the Internal Revenue Code of 1954.

The term "association" refers to an organization whose characteristics require it to be classified for purposes of taxation as a corporation rather than as another type of organization such as a partnership or a trust.

The committee amendment also includes two provisions to resolve technical problems in existing law. The first relates to recapture of accumulated DISC income upon disposition of stock of a DISC. Under present law if stock in a DISC is distributed, sold, or exchanged in certain tax-free transactions (sec. 311, 336, or 337) there is no recapture because neither of the conditions for recapture are satisfied: No gain is recognized and the corporate existence of the DISC is not terminated. The committee's amendment specifically requires recapture under these circumstances.

As originally enacted, section 995(c)(1)(C) of the Code was to apply to transactions occurring after December 31, 1975, in taxable years ending after such date. However, the Revenue Act of 1978, section 701(u)(12)(A) extended the effective date of section 995(c)(1)(C) to transactions occurring after December 31, 1976, in taxable years ending after such date.

HOLDINGS

P-1 is not required to include in its gross income for 1975, as ordinary income, any of the 250x dollars of gain from the sale of S stock.

If an identical transaction occurs after December 31, 1976, a seller of DISC stock would be required to include in its gross income as a dividend the excess of the fair market value over the adjusted basis of the DISC stock, in the hands of the seller, to the extent of the accumulated DISC income of such DISC attributable to the seller, as provided in section 995(c)(2) of the Code.

Section 301.7701-2(a)(1) of the Procedure and Administration Regulations lists six major characteristics ordinarily found in a pure corporation which, taken together, distinguish it from other organizations. These are (i) associates, (ii) an objective to carry on business and divide the gains therefrom, (iii) continuity of life, (iv) centralization of management, (v) liability for corporate debts limited to corporate property, and (vi) free transferability of interests. Whether a particular organization is to be classified as